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spiritual force and vision that has been developed in the facing of profound social realities is the dominant purpose in the arrangement of the program. We have begun to see the outlines of the goal we are striving for; the time has now come to find ways to make our energy count in the attainment of that goal."

They hope to evoke a creative self-expression of the Conference upon such matters as industrial problems, war, militarism, international relations, spiritual realities. Surely there ought to be a place in a Christian civilization for many meetings with similar hopes and plans.

BUREAUCRACY AND DISRESPECT FOR LAW

By HON. CHARLES E. HUGHES
Former Justice of the United States Supreme Court

From Address at Harvard Law School Centennial, June 21,
Which was Entitled "Some Observations on Legal
Education and Democratic Progress"

A PASSION for legislation is not a sign of democratic progress, and in the mass of measures introduced in the legislatures of our free Commonwealths, there is too little evidence of perspective, and an abundance of elaborate and dreary futilities. Occasionally, a constructive measure of great benefit is skilfully planned, but we are constantly impressed with the lost motion and the vast waste in the endeavor of democracy to function wisely.

Statutes Too Uncertain

We should naturally expect that experience as a free people would have had fruition in a demand for certainty in laws, as it is vital to liberty that the scope of inhibition should be understood in advance through the promulgation of laws, which, whether or not well conceived, are at least well understood. But in this matter of first importance, we look in vain for progress. It would undoubtedly surprise a visitor from Mars to be told that in this enlightened nation, after more than a hundred years of the best institutions of free government ever devised, the industrial and commercial activities of the people have been governed by statutory provisions under which, except in the simplest cases, no one, however expert, could make a safe prediction. Controversies as to legislative policies are apt to issue not in any victory of defined import but in a compromise of vagueness, where all may claim success and no one may know what the rule of action is. The regrettable thing is not that this sometimes happened but that the tendency to enact uncertain laws seems to be increasing, and, what is still worse, that the people tolerate it and that there are but faint demands for improvement. Our material progress seems to have created complexities beyond our political competency, and disregarding the lessons of history there has been a disposition to revert to the methods of tyranny in order to meet the problems

of democracy. Intent on some immediate exigency, and with slight consideration of larger issues, we create autocratic power by giving administrative officials who can threaten indictment the opportunities of criminal statutes without any appropriate definition of crime. When King John in the Great Charter said, "And we will not set forth against him nor send against him, unless by the lawful judgment of his peers and by the law of the land," the assurance was of protection against arbitrary power, and we should know by this time that arbitrariness is quite as likely to proceed from an unrestrained administrative officer of the republic reigning by the grace of an indefinite statute as by the personal government of a despotic king. Finding the intricacies of our modern life too much for clearly expressed law, we have formed the habit of turning the whole business over to bureau chiefs, who, with the opportunity to create manifold restrictions and annoyances hold the power of life and death over enterprise and reputation. This has seemed to be a comfortable way of dealing with evils, and the mischief it has been breeding has received scant attention.

War Fed Autocratic Appetite

We went to war for liberty and democracy, with the result that we fed the autocratic appetite. And, through a fiction, permissible only because the courts cannot know what everyone else knows, we have seen the war powers, which are essential to the preservation of the nation in time of war, exercised broadly after the military exigency had passed and in conditions for which they were never intended, and we may well wonder, in view of the precedents now established, whether constitutional government as heretofore maintained in this republic could survive another great war even victoriously waged.

Apart from these conditions, we cannot afford to ignore the indications that, perhaps to an extent unparalleled in our history, the essentials of liberty are being disregarded. Very recently information has been laid by responsible citizens at the bar of public opinion of violations of personal rights which savor of the worst practices of tyranny. And in the conduct of trials before the courts we find a growing tendency on the part of prosecutors to resort to grossly unfair practices. Even as I speak, there appears in the *Harvard Law Review* a striking summary of this sort of lawlessness:

During the past year no less than forty-four convictions were reversed by appellate tribunals in the United States for flagrant misconduct of the public prosecutor or of the trial judge whereby the accused was deprived of a fair trial. In thirty-three of these cases the district attorney made inflammatory appeals to prejudice upon matters not properly before the jury. In three of them the district attorney extorted confessions or coerced witnesses by palpably unlawful methods. In four, witnesses were so browbeaten during the trial as to prevent the accused from fairly making his case. In two, the trial judge interposed with a high hand to extort testimony unfavorable to the accused or to intimidate witnesses for the accused. It is significant that these cases come from every part of the country and from every sort of court.

Need New Birth of Freedom

It might be supposed that the descendants of those who placed in a written constitution the guarantees of Magna Charta, and expounded them so as to protect against arbitrary legislation, as well as arbitrary and capricious administration, would have had such a sure instinct for liberty as to leave no occasion for invoking the most obvious of our basic principles, and yet in this hour we find imperative need for a new birth of freedom and a sharp call to make the old guarantees once more vital and real and to give the assurance of liberty under fair laws and responsible administration.

The pressing problem is how we are to adapt government to imperative needs and yet remain free. It is not simply that we are cluttered with statutes and decisions requiring analysis and the aid of the expositor who can tell us of origins and relations. The practice of government is rapidly changing before our eyes and as yet the movement is largely without guidance or principle. With respect to activities of first importance, we are turning to what within broad limits is personal government relieved of the scrutiny and supervision heretofore demanded as the traditional safeguard of justice. The movement had a wholesome motive in the desire to escape technicalities, to secure an expertness in dealing with complicated problems which could be expected only through a body informed by a continuous experience in a limited field, and to promote efficiency by obtaining play for the common-sense view, the direct approach and the immediate and unhampered decision. Ignoring the distinctions prized by the fathers, and excusing the violation of tradition by easily made phrases, we unite legislative, executive and judicial powers in an administrative agency, with large spheres of uncontrolled discretion, which may investigate and lay complaint and then try and determine facts upon which the complaint rests, their findings of fact, where there is any dispute in the evidence, being made for many purposes conclusive. Useful as are these instrumentalities of administration, they represent to a striking degree a prevalent desire to do without law. There is thus recourse to the most primitive method in dealing with the most difficult problems of the twentieth century.

Intolerable Personal Government

While it is possible that bureaucracy may show wisdom and efficiency, just as despotism by benevolence and directness may give an admirable government, it is the experience of mankind that liberty in the long run cannot be secure without compelling administration to adhere to accepted and declared principles, and safeguarding the individual from the injurious action of officials by affording recourse to impartial and independent tribunals where the announced common understandings which we call laws are enforced. Free institutions are always essentially experimental; they are but approved adjustments and practices to secure liberty; and the constant effort in constitutional government is at once to save the community from exploitation by individuals and to save individuals from the abuses of officialdom. The dilemma is apparent. If administrative action is fettered by minute requirements imposed by the legislature, if necessary departments are controlled by the

constant review of all controversies as to facts by ordinary courts of justice primarily adapted to other needs, the opportunities for impeding litigation will leave vast activities to the mercy of the cunning, selfish, and avaricious, and the means designed for protection will defeat their own purpose. On the other hand, present methods are obviously crude and tend to an intolerable personal government. Here lies the need and opportunity of skilled architects of institutions.

In endeavoring to escape delays and the obstacles to an efficient administration, should it not be remembered that, albeit with other procedure and agencies, the essential conditions of justice must be observed? If the courts cannot deal with administrative questions, should we not at least establish administrative tribunals which, expert through special and continuous study of a particular field, should by being free of the animus, or unconscious bias, of the prosecutor, bring to the decisions of questions of fact the same detachment and standards of impartial judgment which have made our courts, after making allowance for all just criticism, the most successful in their working of all the departments of free government? Is it not time to reorganize administrative agencies not in the interest of any theoretical nicety in division of powers, but so as to vest in different officials the distinct functions of prosecutor and judge? Whatever the question, when it comes to determinations which are essentially judicial in character, there should be instrumentalities and process which however facile and swift secure independence, impartiality and the application of principle. It is peculiarly for those who are both skilled in the history of the law and equipped with knowledge of present necessities, not merely to tell us how the law has developed in the past, but in a time of change to furnish guidance to democracy by aiding in the formulation of principle and the perfecting of practice.

Good Work of Commissions

It was never more true than now that great bodies of law are in the making. Despite defects in organization, administrative agencies are doing a vast amount of good work. Commissions and boards, Federal and State, in dealing with transportation and various public utilities, with competition in trade and with compensation for injuries in industry are putting out what has well been called the raw material of the law that is to be. Principles must be sought and declared if we are to escape a government of caprice, of men, and not of laws, and there is a large field for research and constructive effort now inviting teacher and student which was unknown when perhaps most of those here present took their course of training. It is to the especial credit of this school that this exigency is being met by giving to this new branch of study an important place in the curriculum.

Democracy Must Respect Law

The very principle of constitutional government, or government by law in the interest of liberty, is always the shining mark of those who would destroy all government. The demagogue seizes upon the defects of the best institutions to breed distrust in all. It is true that democracy cannot live without respect for law, but it

must be remembered that law in democracy will have only the respect it deserves. Adaptation according to democratic principle, the growth and development in which democratic progress consists, must ever be the concern of those who know how to distinguish between what is vital and what is merely incidental and temporary; it is those who can really help. Liberty is not to be saved by the lusty shoutings of the street; it needs the discipline and courage of the soldier, the probity and intelligence of the industrious and high-minded official, the undying love of a people instinct with patriotism, the song and the cheer and the ardor of the multitude, but beneath all these and unescapable is the constant working of economic forces with which we must reckon. The adjustment to preserve liberty requires the best training which special studies can furnish, and while all effort at progress under law must be inspired by the idealism of our people, it cannot be successful, at least without great losses through mistaken ventures, save by the service of experts. These are the guardians of the truth which cannot be found on the surface, but lies deep in the mine of thought and experience requiring rare skill for its discovery and extraction. And it is the truth alone that can keep you free.

THE BRITISH EMPIRE, THE LEAGUE OF NATIONS, AND THE UNITED STATES

IN *The Round Table*, perhaps the most authoritative of the quarterly reviews of the policies of the British Commonwealth, the leading article in the March number has for its title, "The British Empire, the League of Nations and the United States." This article, covering thirty-one pages, is, in certain respects, one of the most noteworthy utterances we have read out of Britain. It begins by picturing conditions of Europe, particularly of the British Empire, politically and economically. It argues: "If the British nations cannot devise the means for formulating and pursuing a common policy in defense of law and peace, there is little prospect that other nations, divided by language and history as well as by wide differences of outlook and interest, will succeed where we have failed."

One section is devoted to the refusal of the United States to ratify the Treaty and the Covenant.

The next section concludes: "There is nothing peculiar in this attitude. It is merely, we repeat, the broad reflex of an attitude already taken up by all the European Allies in questions where their national interests are affected, and also by the British Dominions in their relations with the British Government. It gives us a statement, in plain English, of limitations to the ideal of international action which none of the other Allies will, in practice, dispute. So far, therefore, from destroying the League of Nations, the American reservations have rendered it the great service of pointing clearly to the flaws which at present neutralise its worth."

In the next section occurs this significant statement: "The recognition of the Dominions as individual nations in the League of Nations, important advance as it is, has therefore not completely solved the political and

constitutional problem by which they are faced. The Dominions are being committed once again by international negotiations in which they take no part. They will be confronted again, sooner or later, by the choice between repudiating their membership in the British Commonwealth or accepting the consequences of action taken single-handed by the British Government. To ignore this dilemma is to walk blindfold toward a precipice.

"It follows from this that the machinery of the League of Nations is inadequate by itself as a means to uniting the sense and good-will of the democracies of the British Commonwealth for the maintenance of peace. The League of Nations is at work as best it can now. The Dominions are members of the League. But the Turkish treaty is nevertheless being negotiated by the British Government without interest or assistance on the part of the Dominion governments. That simple fact means volumes, and it would be folly to blind ourselves to its significance."

The conclusions set forth in the final section will give to our readers the substance of this illuminating British utterance.

The conclusions which we have sought to point in the preceding sections of this article may now be summarised. They are three in number:

"1. The first is a general warning against the assumption, even more widespread in the Dominions than in Great Britain, that we have already successfully solved the very difficult political and economic problems bequeathed by the war. This assumption is particularly misleading with regard to finance. Its danger lies not only in the fact that we are still producing too little to balance our expenditure, and therefore living beyond our means; it lies even more in the critical financial and economic condition of Europe, with whose welfare our own is inextricably intertwined. The purely economic and financial problem is discussed in another article, and we need only direct attention here to its political corollary. The British democracies are all much engrossed in projects of domestic reconstruction, which must entail a heavy strain on our resources, already taxed to the uttermost. A very large number of political authorities assure us that we must concentrate on these domestic problems, because failure to deal with them may precipitate social and industrial trouble of a very serious kind. It is, indeed, difficult to overrate the importance of such questions as those which are being pressed by the unions of the Triple Alliance in Great Britain—the coal miners, the transport workers, and the railway men. There is a wide demand for government expenditure and government control on a large and increasing scale. We only ask those who press these demands to look to the state of the world in general as well as to the more familiar situation at home. Nothing is more likely to cause industrial upheavals in the British Empire than a further rise of prices, which may easily be accompanied by a set-back in trade. The whole world is still living beyond its means, and we must seek to strengthen our own financial position by every possible means if we are not to be involved in a period of world-wide depression, misery, and unrest.

"2. Our second conclusion arises from the set-back of